

0009



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

February 25, 1999

Mine Site
ACT/007/020
Informal Conference
#5

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 976 907

Denise A. Dragoo
Horizon Mining, LLC
Snell & Wilmer, LLP
111 East Broadway, Suite 900
Salt Lake City, Utah 84111

Re: Findings of Fact, Conclusions of Law, and Order for Informal Conference for Proposed Adjustment to the Bond Amount, Horizon Mining, LLC, Horizon Mine, ACT/007/020, Carbon County, Utah

Dear Ms. Dragoo:

Introduction

On January 29, 1999, an Informal Conference was conducted to discuss Horizon Mining, LLC's (permittee's), request for reconsideration of the Division of Oil, Gas and Mining's requirement that additional bond be posted to reflect temporary, unpermitted storage of "coal mine waste," as defined at R645-100, at the Horizon Mine, and to discuss the Division's requirement that the unpermitted materials be removed from the mine site. The permittee was represented by Larry Jones, Mark Wayment and Denise Dragoo, Esq. The Division's Coal Regulatory Program was represented by Mary Ann Wright, Associate Director of Mining, Pam Grubaugh-Littig, Permit Supervisor, Joe Helfrich, Permit Supervisor, Bill Malencik, Senior Reclamation Specialist, and Wayne Western, Senior Reclamation Specialist. Lowell Braxton served as Conference Officer.

Informal Conference

Bill Malencik began the discussion by suggesting that the initial permit approval may have been flawed by allowing temporary storage of coal mine waste on the mine site without adequate bond, especially since the term "temporary" was not defined in the permit, and a 500-ton cap was placed on the amount of coal mine waste allowed on the site.

The issue is complicated by a September 29, 1998, amendment to the Mining and Reclamation Plan (the MRP) that apparently eliminated an original 500-ton cap on temporarily stored coal mine waste. The originally approved permit contemplated disposal of rocky or high ash coal by shipping these materials to the coal terminal and blending with the higher grade coal for sale. The September 1998 amendment approved disposal of these materials (which might better be described as "underground development waste," one of two types of materials comprising the term "coal mine waste") by:

Stowing in the Horizon Mine workings prior to bringing the waste to the surface;
Blending with the coal and shipping to customers; or
Hauling to the Sunnyside Cogeneration Associates' facility.

Discussions by the permittee centered on the variety of options available in the amendment, but did not discuss or acknowledge that for back stowing purposes, the amendment did not contemplate bringing materials to the surface then hauling underground for stowing. The permittee inferred the amendment contemplated waste storage at the mine for blending at a later date. The permittee also suggested the expense of hauling the waste to Sunnyside Cogeneration dictated investigation of other (shorter haul) options.

All parties acknowledged the difficulty of differentiating between "coal" as defined at R645-100, and coal mine waste, especially since it may be possible to market coal mine waste under certain unique market conditions. The Division representatives noted no objection to marketing coal mine waste as a fuel, so long as the waste stream was appropriately stored, disposed of, and the activity was contemplated in the approved MRP.

As developed by the Division, the issue is that a large amount of coal mine waste is stored on the Horizon Mine site at an area designated for coal storage. The R645 regulations and underlying Act do not contemplate temporary or permanent storage of coal mine waste without appropriate permit approval, and the reclamation bond in the approved MRP did not contemplate the magnitude of coal mine waste found by the Division to be on site. To rectify this situation, the Division wrote Horizon November 30, 1998, December 15, 1998 and on January 13, 1999. The last letter (to Ms. Dragoo) directed the permittee to increase the reclamation bond by \$40,000 no later than January 29, 1999, (reflecting third-party costs to remove unpermitted coal mine waste) and directed the permittee to remove said waste on or before March 15, 1999.

The Division noted that its Technical Assessment (TA), which was attached to the originally approved permit considered 90 days as an adequate temporary storage time. The permittee was not aware of the 90-day time frame in the TA, and questioned citing the content of the TA as a permit condition.

A discussion of the adequacy of the present bond addressed the question of what assumptions were made in the bond calculation for third-party removal of coal mine waste. While specific cites from the permit were not provided, one party suggested that the permit may have contemplated a maximum of 500 tons, as that was the originally approved storage figure. All parties recognized that the September 1998 amendment that eliminated the 500-ton cap on temporary coal mine waste storage rendered the original bond calculation obsolete.

The permittee suggested that given the financial status of Horizon Mining, LLC, imposition of an additional \$40,000 bond for the coal mine waste could pose a financial hardship to the mine owners. The permittee suggested that additional bond increases be deferred until a permit modification or permit mid-term review or permit renewal dictated such action. The Division responded that protracted time frames for mid-terms, etc., did not address the immediacy of the unbonded coal mine waste.

The Division discussed how the \$40,000 figure had been derived. Wayne Western provided a hand written work sheet that derived 2222 tons of stored coal mine waste from figures acquired from Bill Malencik. Cost estimates to move this tonnage were provided verbally to Mr. Western by Division Senior Reclamation Specialist, Steve Demczak. Additional discussion on adequacy of the bond figure suggested the tonnage of coal mine waste on site as of the hearing date, might have increased since the original calculation.

Findings

1. Regulations governing coal mine waste are found at R645-301-528.320, and at R645-300-536 through 536.600.
2. High volume temporary storage of coal mine waste at a mine site is not contemplated in the R645 regulations.
3. The presently approved coal mine waste handling plan allows:
 - a. Stowing in the Horizon Mine workings prior to bringing the waste to the surface;
 - b. Blending with the coal and shipping to customers; or
 - c. Hauling to the Sunnyside Cogeneration Associates' facility.
4. Back stowing of coal mine waste in the Horizon Mine after the materials have been placed on the surface is not an option of the currently approved MRP.
5. Horizon Mining, LLC is not blending the coal mine waste material presently located at the Horizon Mine and shipping the blended coal and waste product to its customers.
6. Horizon Mining, LLC has chosen not to transport the coal mine waste presently on site to Sunnyside Cogeneration, as provided by the approved plan.
7. Generation of coal mine waste is an inevitable outcome of underground coal mining and reclamation activities.
8. The current bond coverage for coal mine waste generated by the Horizon Mine is \$3,349. This coverage may not be adequate to cover reclamation costs for approximately 500 cubic yards of temporarily stored coal mine waste.
9. The \$40,000 bond increase that Horizon Mining, LLC has been directed to provide may not adequately address costs for removal of the existing volumes of stored coal mine waste.

Conclusions

1. By not actively following any of the options for coal mine waste disposal in the approved MRP, Horizon Mining, LLC is in violation of the MRP, and the supporting regulations.
2. The Division's approval of a permit amendment that, at face value, allows storage of unlimited tonnages of coal mine waste for unspecified amounts of time without addressing the regulations for coal mine waste is an action that does not lie within its regulatory purview.
3. The general public and the environment are at risk when greater than 500 tons of coal mine waste are stored at the Horizon Mine when such activity is not adequately addressed in an approved mining and reclamation plan.

Order

1. Horizon Mining, LLC is ordered to immediately initiate the coal mine waste disposal options found in the approved mining and reclamation plan and to reduce coal mine waste on this site to 500 cubic yards or less within 30 days of this Order.
2. Horizon Mining, LLC is prohibited from placing additional coal mine waste on the surface of the Horizon Mine disturbed area until compliance with Order number one has been achieved.
3. Within 60 days of this Order, Horizon Mining, LLC shall submit plans to the Division of Oil, Gas and Mining to modify its mining and reclamation plan as follows:
 - a. Horizon Mining, LLC is required to update the text of the current MRP to accurately describe the coal conveyance system, coal, coal mine waste and snow storage areas and clearly show on a map the coal conveyance system, and the exterior boundaries of the coal, coal mine waste and snow storage areas in accordance with:

R645-301-520
R645-301-521.160, .164, .165, .190
R645-301-731.121
 - b. Horizon Mining, LLC is required to address the disposal of mine waste material generated or located at the Horizon Mine site in accordance with:

R645-301-512.230
R645-301-528.320
R645-301-536, et sec.
4. Until the permit changes required above establish a different figure, no more than 500 cubic yards of coal mine waste may be temporally stored in the area designated for the coal stock pile at the Horizon Mine.

Sincerely,



Lowell P. Braxton
Conference Officer

vb
cc: L. Jones, Horizon Mining, LLC
M. Wayment, Horizon Mining, LLC
M. Wright
P. Grubaugh-Littig
J. Helfrich
B. Malencik
W. Western

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OF

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BOX 12001

SALT LAKE CITY UT 84114-5801

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